

## **8.12.00.00 - EXCHANGES AND ABANDONMENTS**

### **8.12.01.00    General**

Subject to approval by the California Transportation Commission (CTC), excess real property may be used in exchange for all or part consideration for other property required for highway purposes. Exchanges of land in right of way transactions should be limited to those cases where the excess real property is contiguous to the remaining property owned by the grantor of the property being acquired. Noncontiguous excess real property exchanges must have the prior approval of HQ R/W. A copy of the authorization will be included in the Memorandum of Settlement (MOS). Finding "A" or "B" situations are the most desirable type of exchange.

It is Department policy to dispose of excess property by public sale whenever possible. Exchanges are justified if sale of an excess parcel to the general public would be injurious to the interests of an abutting owner, or if damages are minimized by an exchange and the grantor's property rehabilitated to permit its highest and best use. See the Excess Lands Chapter.

### **8.12.02.00    Exchanges of Superseded State Highway Right of Way**

When all or a portion of a State highway has been superseded by a change in location and is no longer necessary (including need for bike paths, vista points, and roadside rests, etc.) and title to the right of way is easement only (either prescriptive or by easement deed), and said highway is not to be relinquished to the county, it may be vacated or disposed of in accordance with Section 118 of the Streets and Highways Code (S&H Code) (see Section 8.12.10.00). A superseded right of way may be retained in the State Highway System when its use changes solely to such as a bike path, vista points, and roadside rests, etc. Under these circumstances, the highway is not to be vacated (see Section 104, subdivision (j), S&H Code).

The District will not contractually obligate the State to vacate an easement without first complying with the requirements of Streets and Highways Code, Sections 2381, 8313 and 8330.5. These sections require contact with local agencies having jurisdiction over the areas. Section 8340 of the S&H Code allows the reservation of easements for utility purposes prior to vacation.

When title to such superseded right of way is owned in fee, the State may convey title to a private individual only by Director's Deed. Saleable segments of such right of way may be used in exchange the same as any other fee-owned property.

### **8.12.03.00    Appraisal for Exchange**

Excess real property, or an interest therein, proposed for exchange shall be appraised in accordance with Chapter 7. The appraisal shall be approved in accordance with current delegations. This requirement will not apply to parcels acquired specifically as substitute parcels for public utilities, government-owned land or railroads.

The appraisal report of exchange property shall, however, be assigned a Register number for filing and reference purposes. In lieu of a Register number the District may use the number assigned to the Director's Deed.

### **8.12.04.00    Acquisition and Exchange of Excess**

The State may acquire land in excess of its needs by authority of Sections 104.1 and 104.2 of the S&H Code and exchange it for other property needed for highway purposes. Title is to be taken in the name of the State and conveyance from the State will be by Director's Deed. Acquisition of excess land must be in accordance with Sections 1240.150 and 1240.410 to 1240.430, C.C.P.

The acquisition agent is responsible for the completion of the identification, pro-rata cost, and inventory value sections of the Excess Land Inventory and Disposal Record (see Excess Lands Chapter). Refer to the discussion on preparation of MOS in Section 8.50.00.00. Where excess lands are included in an Order for Possession, an Excess Land Inventory and Disposal Record is to be prepared at the time the Order is filed and immediately forwarded to the appropriate Branches.

In an exchange transaction consummated simultaneously between the State and two landowners (from each of whom State will acquire right of way), it is permissible to take title to excess land in the name of a title company, or one of such owners. For example, all of A's lot is purchased; A conveys one-half to the State for right of way and the other half to

B, or to the title company who conveys to B, as all or part consideration for B's granting a right of way to the State. In such cases, the Contracts and the MOSs must clearly show the basis of the entire transaction, including the extent of allowance which the State is receiving for the exchanged property and its cost to the State.

The Contract with the grantor of the property to be exchanged, and with the grantor who is to accept the exchanged property, should be submitted simultaneously for approval. In all cases other than simultaneous exchange transactions, title shall be taken in the name of the State.

#### **8.12.04.01      Commitment to Convey Excess Prior to Acquisition**

When entering into an agreement obligating the State to convey excess land yet to be acquired by the State, the following clause will be used in the Right of Way Contract:

"If, for any reason, the land described in Clause No. \_\_\_\_\_ hereinabove is not acquired by the State of California, prior to \_\_\_\_\_, 19\_\_, or if the land so described is acquired by the State, but is subsequently found to be necessary for a public highway or other public purposes, the State shall, in that event, pay the undersigned grantor, and grantor agrees to accept, the sum of \$ \_\_\_\_\_ in lieu of the State conveying the real property described in Clause No. \_\_\_\_\_ and grantor agrees to release and forever discharge the State of California from any further obligation on this account."

Obligations to convey excess land not yet acquired should be carefully considered since the owner of the excess need not convey it to the Department and may also prevent its acquisition in a condemnation proceeding.

#### **8.12.05.00      Land Exchange**

The Contract must contain the following clause in these transactions:

"Subject to approval by the California Transportation Commission, deliver to Grantees (designating them as joint tenants, or tenants in common, or whatever is desired), a good and sufficient Director's Deed, properly recorded, to the following described property, free and clear of all liens and encumbrances except taxes and

special assessments, if any, easements, restrictions and reservations of record\*\*\*."

or

"Subject to the approval by the California Transportation Commission, deliver to Grantees (designated them as joint tenants, or tenants in common, etc.), a good and sufficient Director's Deed, properly recorded, to the property outlined in red on the sketch attached hereto and made a part hereof free and clear of all liens and encumbrances except taxes and special assessments, if any, easements, restrictions and reservations of record\*\*\*."

When necessary to reserve access rights, add the following to the above:

\*\*\* and excepting and reserving therefrom access rights from said property to be conveyed along and across a line (here insert description of line), said line also being the \_\_\_ line of the State highway. It is understood that the State in no way will be obligated to pay escrow charges, title insurance fees or documentary transfer taxes incurred in the conveyance to the grantor referred to above."

NOTE: It is imperative that any defects in the title of the State be listed in the contract under the exceptions in the above clause so that the State will not be obligated to convey a better title than it possesses.

As to taxes, it is important, prior to conveyance, to have the taxes canceled. The reconveying of title into private ownership will have the effect of reviving the tax lien unless the proper procedure for cancellation has been taken while the property is under State ownership.

If it is decided not to cancel the taxes, then the agreement to deliver the deed should specifically call attention to the fact that taxes may be a lien and the State does not guarantee title in that regard.

In many instances, it will be necessary to insert reservations or exceptions in the Director's Deed. The most common instance would be the reservation of access rights where the lands being conveyed adjoin a freeway. Reservations of oil and mineral rights will not apply to exchange transactions where grantors are conveying all oil and mineral rights to the State. However, if grantor reserves the mineral rights, then the State shall do likewise.

Care should be taken to see that any necessary restrictions are included in the Director's Deed, not only concerning access rights, but to protect sight distance, possible setback lines, etc.

The District shall arrange for the recordation of the Director's Deed before delivery to the grantee. The State may pay recording fees as part of the consideration in exchange transactions.

#### **8.12.06.00 Improvement Exchange**

The following special procedures will apply where a building improvement is to be exchanged in a right of way transaction as whole or part consideration for land being conveyed to the State for highway purposes:

- A. The District shall prepare an improvement disposal report, in duplicate, covering the building improvements involved, which report will clearly justify the proposed exchange value.
- B. Upon execution of the Contract, a bill of sale for such building improvements shall be delivered to State's grantor.
- C. The building improvement exchanged shall be removed from State property within 60 days after title to the improvement passes to the grantor.

The exchange of building improvements shall be used only in cases where the State will receive full credit in the exchange for the amount of the market value of such improvements.

Where State-owned improvements are to be exchanged for required right of way, the following clause will be included in the Contract:

"The State shall deliver to \_\_\_\_\_ a bill of sale for the (description and address of building being exchanged) located (legal description, if same is not too long) \*\*\*."

This clause shall be followed by a provision which will ensure the removal of the improvements by the grantor, i.e., forfeiture of title to the improvement or a withholding of a portion of the monies payable under the contract. See Section 8.06.12.00 for a clause which can be modified to fit this situation.

#### **8.12.07.00 Exchanges With No Monetary Consideration**

Where excess real property or interest therein is used in exchange and no monetary consideration is received as a credit against any payment made to the State's grantor, a monetary evaluation of any benefits or savings accruing to the State (such as an offset to severance damages, substitute access to avoid buy-out, etc.) shall be provided in the MOS to assure State is receiving consideration commensurate with the value of the property to be conveyed.

#### **8.12.08.00 Payment by Grantor**

Where the exchange will involve a payment to the State by the grantor the following clause will be included in the Contract:

"In consideration of the proposed recordation and delivery by the State of the Director's Deed referred to in Clause \_\_\_\_, it is agreed between the parties herein that the undersigned grantors shall deposit with the Department of Transportation the sum of \$\_\_\_\_\_. Said deposit will be made at District \_\_\_\_\_ Office located at \_\_\_\_\_, within \_\_\_\_ days after State, by certified mail, notifies grantors that this Right of Way Contract has been accepted by the State as evidenced by the signature of the District Director or the delegated representative on the copy of the contract delivered with said notification.

In the event grantors do not deposit said sum within the time period specified, then the State is relieved from any and all obligations to deliver said Director's Deed and shall pay \$\_\_\_\_\_ for the property conveyed by Document No. \_\_\_\_\_."

#### **8.12.09.00 Release of Liability-Director's Deed**

Where the exchange conveyance will be by Director's Deed and the grantor insists on the privilege of entering upon the land in advance of the date the Deed is recorded, the following clause must be in the Contract:

"In the event the grantor elects to enter upon the land to be conveyed by Director's Deed under Clause \_\_\_\_\_, in advance of the recording of said Director's Deed, the State is to be relieved from all liability and all claims for damages by reason of any injury to any person or persons,

or property of any kind whatsoever and to whomsoever, from any cause or causes whatsoever, while on the area to be conveyed as described herein.

The grantor herein further understands and agrees to indemnify and save harmless the State from all liability, loss, cost and obligation on account of or arising out of any such injury, however occurring.

It is further understood that this agreement shall not in any way imply or be construed to grant any additional rights of possession, occupancy, or use of said property until recordation of the Director's Deed as provided in Clause \_\_\_\_\_ herein.

It is further understood that if this transaction is not completed under the terms of this contract, any improvements which the grantor may erect or cause to be erected shall become the property of the State, which shall have the right to use or dispose of said improvements as it may see fit."

#### **8.12.10.00**    **Vacation**

Vacation is the complete or partial abandonment or termination of a public right to use a street, highway, or public service easement. A State highway may be vacated only by the CTC. If the CTC determines that a public service easement is no longer needed by the public, the Department may dispose of the property through the vacation process. As an alternate to

vacation, the Department may elect to dispose of the property as provided in Section 118 of the S&H Code.

There may be instances when disposal through vacation or other procedure is not acceptable. Examples of this are when all access to an adjoining property would be cut off or if there are public utility facilities in place which are in use and which would be affected by such disposal or vacation. Additionally, the Department is required, by statute, to advise local agencies prior to vacation. See Section 8.12.02.00 for statutory references.

The DDC-R/W will determine the method of disposal. Disposal under Section 118 should, in most circumstances, be at market value. There may be exceptions and consultation with Legal and HQ R/W may be necessary.

When an easement is vacated as part of a right of way transaction and if grantor requests confirmation of such vacation, the following clause may be used in the Right of Way Contract:

"Upon completion of the project designated as \_\_\_\_\_ and opening the same to public travel, there will be presented to the California Transportation Commission the customary form of resolution and favorable recommendation of the Department of Transportation covering vacation of the portion of the existing highway across the grantor's property superseded by the new construction."